

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ROBERT GUSTAVSEN, JOSEPH )  
CUGINI, DEMETRA COHEN, LEE )  
WILBURN, JACKIE CORBIN, MARY )  
LAW and CECELIA BRATHWAITE, )

on behalf of themselves )  
and all others similarly situated, )

Plaintiffs, )

v. )

Civil Action No. 1:14-cv-11961-MLW

ALCON LABORATORIES, INC.; ALCON )  
RESEARCH, LTD.; FALCON )  
PHARMACEUTICALS, LTD.; SANDOZ, )  
INC.; ALLERGAN, INC.; ALLERGAN )  
USA, INC.; ALLERGAN SALES, LLC; )  
PFIZER INC.; VALEANT )  
PHARMACEUTICALS )  
INTERNATIONAL, INC.; BAUSCH AND )  
LOMB INCORPORATED; ATON )  
PHARMA, INC.; MERCK & CO., INC.; )  
MERCK, SHARP & DOHME CORP., )  
PRASCO, LLC; and AKORN, INC., )

Defendants. )

**ORAL ARGUMENT REQUESTED**

**DEFENDANTS' OMNIBUS MOTION TO DISMISS**  
**FIRST AMENDED COMPLAINT UNDER FED. R. CIV. P. 12(b)(1) AND 12(b)(6)**

Defendants Alcon Laboratories, Inc., Alcon Research Ltd., Falcon Pharmaceuticals, Ltd., Sandoz, Inc., Allergan, Inc., Allergan USA, Inc., Allergan Sales, LLC, Pfizer Inc., Valeant Pharmaceuticals International, Inc., Bausch & Lomb Incorporated, Aton Pharma, Inc., Merck & Co., Inc., Merck, Sharp & Dohme Corp., Prasco, LLC, and Akorn, Inc. ("Defendants"), hereby move this Court pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure for an order dismissing the First Amended Class Action Complaint for Damages and Injunctive

Relief (“FAC”). The grounds for this motion are set forth in the accompanying memorandum of law. Defendants further state:

1. Plaintiffs filed the FAC (Dkt. No. 43) on September 24, 2014, in lieu of responding to Defendants’ pending motions to dismiss, which were filed on September 5, 2014 (Dkt. Nos. 38-41).

2. The filing of the FAC procedurally moots Defendants’ motions to dismiss.

3. The Court previously granted Defendants’ Assented-To Motion for Approval of Briefing Structure and Schedule, which permitted Defendants to file an omnibus motion to dismiss and supporting memorandum of law signed by all Defendants, the memorandum not to exceed thirty (30) pages; and a motion to dismiss based on federal preemption and supporting memorandum of law signed by the Generic Defendants, the memorandum not to exceed twenty (20) pages. (Dkt. Nos. 12, 42.)

4. Given that the FAC does not add any new claims or parties and Defendants’ memorandum in support of this Motion is substantially the same as the supporting memorandum filed on September 5, 2014 (Dkt. No. 41), Defendants have filed the supporting memorandum for this Motion in accordance with the Court’s order approving the 30-page limit for the initial memorandum in support of the omnibus motion to dismiss. Should the Court require a separate order approving enlargement of the page limit for this second omnibus motion, Defendants will submit an appropriate motion and draft order.

#### **REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(D), Defendants respectfully request oral argument on this motion.

**LOCAL RULE 7.1(A)(2) CERTIFICATION**

Undersigned counsel certifies that they have conferred with Plaintiffs' counsel in accordance with Local Rule 7.1(A)(2) in connection with this motion.

Dated: October 10, 2014

Respectfully submitted,

/s/ David S. Clancy

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**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified in the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on October 10, 2014.

Dated: October 10, 2014

/s/ David S. Clancy  
David S. Clancy (BBO #636031)